

175345

Received & Inspected

DEC -5 2011

FCC Mail Room

Before the  
**Federal Communications Commission**  
Washington, D.C.

In the Matter of )

Applications for Construction Permit )  
for Reserved Channel )  
Noncommercial Broadcast Station of )

Northwoods Catholic Radio )  
Rhineland, WI )

And )

Lakeland Seventh-day Adventist Church )  
Minocqua, WI )

As accepted for filing )  
From MX Group 517A )

Application File Numbers:

BNPED20071022ASC

6 BNPED20071019ADB 89

RECEIVED

2011 DEC -6 A 6:01

ADMINISTRATIVE SERVICES DIVISION

**Petition to Deny**  
**The joint Petition for approval of Settlement Agreement between**

**Northwoods Catholic Radio Rhineland, WI**  
**(BNPED20071022ASC)**

**and**

**Lakeland Seventh-day Adventist Church Minocqua, WI**  
**(BNPED20071019ADB 89)**

**From being accepted as applicants and from entering into a settlement agreement that does not include all applicants from the MX Group 517A**

## **Summary**

The Milewski Nature Fund Inc. (MNF), represented here by President Michael Milewski, respectfully submit this Petition to Deny the Joint Petition for approval of Settlement Agreement and Northwoods Catholic Radio <sup>1</sup> and Lakeland Seventh-Day Adventists Church<sup>2</sup> Petition for Reconsideration 11/15/2011 (hereafter called New Settlement)<sup>3</sup>

MNF requests that the Commission consider the presented facts, FCC Rules, Northwoods and Adventist applications and the proposed New Settlement which will all show that the New Settlement has material defects in that not all applicants in the MX Group 517A were a party to or a part of this agreement which is stated to “look to the resolution of mutually exclusive applications through the grant of above stated applications...” and that neither application can be made a singleton when there are still applications in the MX Group 517A which are still in competition with them.

## **Petition Background**

MNF, Northwoods and Adventist have applications submitted during the October 2007 Filing Window for Applications for Permits to Construct New Noncommercial Educational FM stations and are currently identified as members of the MX Group 517A. MNF’s Application for Permit to Construct New Noncommercial Educational FM station and their membership in the MX Group 517A means they

---

<sup>1</sup> Northwoods Catholic Radio, Rhinelander, WI BNPED20071022ASC

<sup>2</sup> Lakeland Seventh-day Adventist Church Minocqua, WI BNPED20071019ADB 89

<sup>3</sup>See Joint Petition for approval of Settlement Agreement and Northwoods Catholic Radio and Lakeland Seventh-Day Adventists Church Petition for Reconsideration 11/15/2011 (hereafter called New Settlement)

have an attributable interest in the acceptance of applications for filing from the MX Group 517A. MNF still hopes to honor their hometown community with a radio station.

Section 307 (b) of the Communications Act of 1934 states that the FCC will award a decisive preference to the applicant who provides the greatest number of people with the highest level of service and further in the same Act (as amended), the grant of any application should best further the fair, efficient, and equitable distribution of radio service among communities.

This Petition to Deny is in response to the Publication in the Daily Digest of Broadcast Applications on 11/15/2011 which identified Northwoods and Adventist as having applications that can be filed from the MX Group 517A from the October 2007 Window for Applications for Permits to Construct A New Noncommercial Educational FM stations.

## **Petition Specifics**

The Commission acted on the New Settlement tentatively approving a settlement from the MX Group 517A. This Petition proposes that this New Settlement does not take into account all applicants in the MX Group 517A. Since this tentatively approved New Settlement does not include all applicants from the MX Group 517A this New Settlement does not fulfill its stated intended function of resolving “mutually exclusive applications.” Since not all applicants in MX Group 517A have been included, allowing this New Settlement to go into effect would not allow equitable distribution of radio service among communities affected.

MNF proposes to reduce their transmission power so that a total of 4 applicants can be granted a permit if the Commission would approve a minor amendment to the MNF application which would be to reduce transmission power which would provide enough space for Northwoods, Adventist and MNF to broadcast.<sup>4</sup> Without all applicants from the MX Group 517A being represented in the New Settlement,

---

<sup>4</sup> see Milewski Petition to Reconsider

MNF respectfully submits to the Commission that this New Settlement should be denied since it is not fair and equitable.

The proposed granting of singleton status to Northwoods and Adventist is not fair since there are still small spacing issues with applicants from the MX Group 517A who have not signed or been a party to the New Settlement. FCC rules state that competing applicants must be placed in MX Groups in order for a comparison to be undertaken. Since both Northwoods and Adventist are still in a mutually exclusion status they cannot be granted a singleton or noncompeting status. Since a tentative selectee has been made in the MX Group 517A, both Northwoods and Adventist can only secure a permit if they are misconstrued as singeltons.

The FCC has also stated as part of a Point System Analysis that there is a goal of having license controlled by people in diverse communities, who know the broadcast community. MNF contends that it is more important for local communities to control broadcast facilities than it is churches with PO Boxes and no congregation in the community to dictate what a local community will receive through broadcast facilities. Local community members will participate in and listen to their community radio station and discover and rediscover aspects of their communities that will enrich their lives and their community, as well as afford them a chance to voice their concerns, comments, opinion, interests, values and ideas. The 21<sup>st</sup> Century has enlarged the access to programming outside a local community, in fact current technologies have made broadcasts from around the world abundant and delivered by commercial and noncommercial interests; however, the same technology has reduced the chance for actual, real local broadcasting.

These facts establish a substantial and material question of fact that the grant of the cited applications would be prima facie inconsistent with The Communications Act of 1934 Section 309(a)

MNF respectfully submits this Petition within the stated 30 day period <sup>5</sup>

---

<sup>5</sup> See Threshold Fair Distribution Analysis of 9 Groups of Mutually Exclusive Applications for Permits...Memorandum Opinion and Order published October 28, 2010

## **Conclusion and Requested Actions**

MNF first requests that all applicants in MX group 517A be treated in a similar manner with respect to filing amendments and gaining construction permits. Disparate treatment of similarly situated applicants would go against the precedent set in *Melody Music, Inc v. FCC*<sup>24</sup>. If Northwoods and Adventist are given the opportunity to amend their applications to become singeltons then MNF should be able to amend their application to produce the same result. A new settlement agreement that does not include all affected parties is not an inclusive nor binding settlement agreement.

MNF secondly requests that Northwoods and Adventist cannot be given a singleton status if they are still in competition with MNF's application since all three applications have been placed in the MX Group 517A. There are no interference or spacing concerns between MNF and Adventist; however, there is an 8km lack in space between MNF and Northwoods. This 8km spacing problem could be relieved by MNF lowering their transmission power to 18Kw so that the most applicants can receive permits. MNF respectfully requests that the Commission reconsider MNF's application and allow them to lower their transmission power and be able to attain a construction permit.

MNF's last request is to consider the Northwoods' application's proposed programming which does not include general educational programming until sometime in the unidentified future while the MNF application has educational programs made by community members that would start on the first day of broadcasting and that have already begun to enrich this small town, rural community.

Accordingly and for the reasons discussed above, affirmed by the sworn declarations of the Petitioner Michael Milewski on behalf of the Milewski Nature Fund, the Commission should find that this Petition to Deny and prior records incorporated here by reference raise substantial and material questions of fact commanding a dismissal of the New Settlement as found in the joint Petition filed by Northwoods and Adventist.

Respectfully submitted,

Michael Milewski, President of the Milewski Nature Fund, Inc.

## Affidavit

I, Michael Milewski, hereby certify that, on the 3<sup>rd</sup> day of December, 2011 there are no considerations or other motivations behind the filing of this Petition to Deny except the petitioner's motivation to serve the community she resides in and assist the organization she directs in having a voice about applicant erroneous information and inequitable and non-diverse actions that do not serve the public interests, or the stated reason for NCE licenses.

I, Michael Milewski, hereby certify, to the best of my knowledge, that the information contained in this Petition to Deny is factual and true and based on facts from the Applications for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station from Northwoods, Adventist and MNF, the New Settlement, and FCC rules and precedents.

I, Michael Milewski, hereby certify that I have, on the 3<sup>rd</sup> day of December, 2011, caused a copy of the foregoing "Petition To Deny" to be delivered by U.S. First Class Mail, postage prepaid, to the following:

Office of the Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, D.C. 20554  
ATTN: Audio Division, License Renewal Processing Team  
Mail Stop 1800B  
OR  
Video Division, License Renewal Processing Team  
Room 2-A665

Northwoods  
Adventist



A handwritten signature in cursive script, appearing to read "Remi Czajkowski", is written over the notary seal.

Michael Milewski 12-3-2011  
Signed this 3<sup>rd</sup> day of December, 2011 by Michael Milewski, President of the Milewski Nature Fund, Inc.